

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3643 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANDHI HABIB JUSAB

Versus

SHRI TRIVEDI, GEOLOGIST, MINES & MINERALS DEPT.

Appearance:

MR SURESH M SHAH for Petitioners

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner to the order annexure 'G', dated 7.5.84 passed by the Geologist, Geology and Mines Department, Rajkot, under which the penalty of Rs.32,500/- has been imposed upon the petitioner for unauthorised excavation of minor mineral,

limestone from the land in dispute.

3. One of the contentions raised by the learned counsel for the petitioner is that the Geologist has no jurisdiction to pass this order and only the State Government could have made the said order and that too in case it is found to be a case of unauthorised excavation of mineral and not otherwise. From the reply which has been filed by the respondent it comes out that the petitioner has been given sufficient opportunity to produce defence, by the authority who made the order, impugned in this Special Civil Application. The only grievance which is made is that this order has been passed by the authority which has no jurisdiction. It is suffice to say that for this ground, the petitioner should have first approached to the higher officer of the department rather than to approach to this Court straightaway by filing this Special Civil Application. The approached by the petitioner in this matter, to this Court, would have been justified only after he would have approached the higher authorities and the higher authorities would not have decided the matter within a reasonable time or decided against him.

4. This Court has protected the petitioner by way of interim relief in terms of para 24(C), meaning thereby, the implementation and operation of the order impugned was stayed. This order was therefore not given effect to for all these years. In these circumstances, I consider it to be appropriate that the petitioner may approach to the respondent, Secretary, State of Gujarat, Mines and Geology Department, and the Secretary of the said Department will decide the matter in accordance with law. This course has been adopted in this case for another reason also. Earlier the petitioner approached to this Court by filing Special Civil Application No.146 of 1980 and the grievance has been made therein that the order passed against him of imposing the penalty has been made without notice and affording opportunity of hearing. That Special Civil Application has been disposed of on the statement made by the learned counsel for the respondents that a fresh order will be made after affording to the petitioner a reasonable opportunity of being heard. Thereafter the impugned order has been made and as stated earlier, after affording a reasonable opportunity of hearing to the petitioner. The petitioner has not raised any issue regarding competence of the officer who made the order earlier. So it is appropriate that the matter may be agitated by the petitioner first before the State Government in the Department.

5. In the result, this Special Civil Application is disposed of with directions to the petitioner to approach to the Secretary in the Department of Geology & Mines, Government of Gujarat, against the impugned order within a period of one month from the date of receipt of certified copy of this order. It shall be open for the petitioner to raise all objections against the impugned order in the representation-cum-appeal filed by him before the said authority and that authority shall decide the same within a period of three months next thereafter. Till then, interim relief shall continue. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)